dried up earth, earth mould, broken twigs and dried up leaves produced in evidence before the Court, it was quite impossible to say, as alleged in the charge, that the appellant was in possession of 40 lbs. 1 2/5 ozs. of Indian hemp or, indeed, of any specified quantity of Indian hemp. It might be that he was in possession of something from which Indian hemp might be constituted or manufactured: but that was not the charge. I agreed with that contention. The Dangerous Drugs Regulations, 1952, make it an offence to cultivate the plant known as Cannabis Sativa or to manufacture, or carry on any process in the manufacture of, a drug — including, of course, Indian hemp. Whatever other offence the appellant may have committed, in my view, upon the facts of the case, there was no adequate evidence upon which he could properly be convicted of unlawful possession of 40 lbs. 1 2/5 ozs. of Indian hemp or, indeed, of any ascertained quantity of Indian hemp.

Having arrived at this conclusion it becomes unnecessary for me to deal with the further argument raised by Mr. Choong that the learned President failed to give adequate consideration to the appellant's cautioned statement — which supported the evidence he subsequently gave on affirmation at his trial — that he had found the gunny sack containing all this substance in the sea and that he had taken it home without knowing what it was. I would only make the comment that his statement that he had found it in the sea was, at least to some extent, supported by the evidence of the Chemist — given over a month after that statement had been made by the appellant — that the substance was still damp when he examined it and that the dampness appeared to be (due to) sea water.

It was for these reasons that I allowed this appeal, quashed the conviction and set aside the fine.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

TEOH AH KOW v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) October 7, 1960]

[Penang — Criminal Appeal No. 32 of 1960]

Criminal Law and Procedure — Abetment of voluntarily causing hurt — Criminal Procedure Code (Cap. 21), s.172 — Juvenile Courts Ordinance, 1947, s.21.

The appellant aged 16 years was convicted of abetting the commission of the offence of voluntarily causing hurt to the complainant by means of a knife. Upon conviction an order was made that he be sent to the Henry Gurney School for 3 years. On appeal it was contended that there was insufficient evidence for a conviction and that the President should have complied with section 172 of the Criminal Procedure Code by giving the appellant an opportunity to recall and re-examine witnesses called by the prosecution on the amended charge.

Held: there was sufficient evidence to justify the conviction and the appeal against the conviction be dismissed, but in the particular circumstances of the case and in view of the appellant's record, the Order committing him to the Henry Gurney School for 3 years be set aside and that he be discharged under section 21 of Juvenile Courts Ordinance, 1947 conditionally upon him entering a bond.

CRIMINAL APPEAL.

Triptipal Singh for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The appellant in this case, a lad 16 years of age, was convicted of abetting the commission of the offence of voluntarily causing hurt to the complainant by means of a knife. Upon conviction in the Juvenile Court an Order was made that he be sent to the Henry Gurney School for three years. The appeal is against both the conviction and sentence.

The brief facts of the case were that three young persons were playing cards in a back lane in Penang shortly after 8 o'clock at night when they were set upon by a gang of 5 or 6 Chinese youths. All the three persons who were then playing cards received injuries of varying nature as a result of the assault that were made upon them by these hooligans, who were armed with cutting instruments. At the close of the case for the prosecution, there being no evidence in the opinion of the trial Court that the appellant himself had caused any hurt to the complainant the charge was amended to one against him of abetting the commission of this offence of voluntarily causing hurt. The defence put up by the appellant was an alibi. The only evidence against him consisted of the identification of him by one of the three youths who were playing cards at the time. This youth said, in relation to the appellant:—

"He did not slash me, but he came with the assailants. He carried a parang. He chased me. I knew the accused for more than a year."

After the assault the complainant lodged a complaint at the Police Station that same night in which he gave the names of three of the assailants, including the accused. It is said by Mr. Triptipal Singh, for the appellant, that there was insufficient evidence of identification in this case. It may well be that the evidence of identification was slender, but the trial Court accepted the evidence of the complainant that he had known the appellant for a year, that he saw him on that occasion, and that he, in fact, named him in the complaint that he made on the same night at the Police Station. There was clearly, in my view, sufficient evidence to justify the conviction, and the appeal against the conviction is dismissed.

The next complaint made by Mr. Triptipal Singh is that at the close of the case for the prosecution, on the charge being amended to one of abetting the commission of the offence, the learned President, in accordance with the provisions of section 172 of the Criminal Procedure Code, should have given the appellant an opportunity to recall and, if necessary, re-examine any of the witnesses who were called for the prosecution. Again, I am satisfied that it is a perfectly valid technical objection and the learned President clearly should have complied with section 172 of the Criminal Procedure Code. But on the facts of the case I am wholly satisfied that no miscarriage of justice was caused by reason of the fact that he failed to do so. The appeal against the conviction is dismissed.

As regards the sentence, whilst I do not for a moment seek to minimise the seriousness of this type of offence, in this particular instance it would appear from the report — careful and detailed, as it invariably is — made by the Probation Officer in this case that the appellant, apart from one minor conviction for selling cinema tickets on the black market, has not been in trouble before. It would also appear — and it seems to me a point of substantial importance — that the Probation Officer investigated the matter as to whether there was any reason to believe that the appellant was implicated either directly or indirectly with secret societies in Penang and received a negative reply from the Police to the effect that there was no reason to believe that he had any connection with secret societies.

The appellant is the son of poor but entirely respectable parents, and it would seem that he renders the father some assistance in carrying on his trade or occupation as a "poh peah" vendor. In the particular circumstances of this case — and I must confess with some doubt — I feel that I can and ought to give the offender another chance. I propose, therefore, to set aside the Order committing him to the Henry Gurney School for three years and order his discharge under section 21 of the Juvenile Courts Ordinance, 1947, conditionally upon him entering into a bond with his father as one surety in the sum of $250, and a further surety to the satisfaction of the Registrar in the same amount of $250, conditional upon the offender being of good behaviour and appearing for sentence any time if called upon during the period of the next two years. I make it a special condition of the bond that during the period of its continuance the offender remain under the care, supervision and control of the Probation Officer for Penang and Province Wellesley. Subject to that variation of the Order, this appeal must be dismissed.

Order varied. Appeal dismissed.

CHONG CHIN KEE v. LEE SONG & ANOR.

[C. A. (Thomson C.J., Hill J.A. and Ong J.) October 10, 1960]

[K. L. — F.M. Civil Appeal No. 45 of 1960]

Landlord and Tenant — Demolition of building for the purpose of rebuilding — Application for.

The respondents as owners of the premises No. 25 Cross Street, Kuala Lumpur applied to the Rent Assessment Board for the Municipal Area for a certificate that the Board is satisfied that the applicants intended to demolish the said premises for rebuilding purposes and that in its opinion it is in the public interest that they should be permitted to do so. The Board after hearing evidence and being satisfied that the respondents should be allowed to demolish for rebuilding purposes(provided that the tenants be allowed to occupy the said premises until May 31, 1960) issued the necessary certificate on November 28, 1959. The appellant, a tenant of the said premises, on appeal contended that firstly as the Rent Assessment Board were to follow the Civil Magistrate's Court Procedure — 1940 Rules — the second respondent should have described himself as a trustee and secondly that the Board had erred in law.

Held: (1) the second respondent correctly described himself in the application and that in any event such an irregularity could be cured by an amendment and in this case it in no way affected the merits of the case and that section 41 of the Courts Ordinance should be applied;

(2) if the appellant wished to make out that the Board had erred in law he had to make out either that there was no evidence on which a tribunal directing itself correctly as to the law could have arrived at the conclusion at which it did arrive or that as a matter of inference the evidence on which the tribunal acted should not have led to that conclusion.

Gurcharan Singh v. *Rochi Silk Store* (5) followed.

Cases referred to:—

(1) *Trustee of Chettiar Temple* v. *Kehar Singh* [1954] M.L.J. 18.
(2) *Vyse* v. *Foster* 8 Ch. A.C. 309.
(3) *Salomon* v. *Salomon* (1897) A.C. 22.
(4) *Teo Boon Hak* v. *Reduan bin Haji Ali & Ors.*, [1941] M.L.J. 183.
(5) *Gurcharan Singh* v. *Rochi Silk Store* [1959] M.L.J. 229.

COURT OF APPEAL.

Lall Singh for the appellant.

R. R. Chelliah for the respondent.

Cur. Adv. Vult.

Hill J.A. (with whom **Thomson C.J.** and **Ong J.** agreed): In August, 1959, the respondents as the owners of the premises at No: 25, Cross Street, Kuala Lumpur, applied to the Rent Assessment Board for the Municipal area for a certificate that the Board is satisfied that the applicants intend to demolish the premises known as No: 25, Cross Street, Kuala Lumpur, for the purpose of rebuilding and that in its opinion it is in the public interest that they should be permitted so to do.

The appellant was a tenant of the respondents/applicants in respect of the said premises.